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IN THE

# Supreme Court of the United States

October Term, 1971

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NO. 71-1624

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MOSES LEWIS, JR., *Petitioner*

v.

STRACHAN SHIPPING COMPANY, ET AL,
*Respondents*

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**Petition For Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit**

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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*To The Honorable Judges of Said Court:*

### QUESTION PRESENTED

The question presented here is the same one decided by both Courts below:

Does a Deputy Commissioner have the power to administratively repeal the Longshoremen's & Harbor Workers' Compensation Act's one year time limitation in which an additional claim for compensation must be filed after a longshoreman's claim has been adjudicated to his complete satisfaction by the Deputy Commissioner's duly authorized representative?

In affirming the District Court's holding that it could not, because ". . . to hold otherwise would be to delete the limitation provision from the statute,"[1] the Court of Appeals held that it was for the "Congress either to lengthen Section 22's limitations period or to provide other means to postpone the running of the statute of limitations."[2]

## COUNTER STATEMENT OF THE CASE

For the Court to have a complete picture of the self-executing provisions of the Act, a somewhat more detailed statement of the case is required.[3]

Moses Lewis, Jr. (Petitioner) sustained bodily injury some 15 years past on July 11, 1956 under circumstances giving rise to Employer and Carrier liability under the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C.A. §901, *et seq.* (the Act) for such medical and

1. Pet. for Cert., App. B, p. 45.

2. Pet. for Cert., App. A, p. 28.

3. In view of the fact that certain documents are not contained in the Appendices to the Petition for Writ of Certiorari they are reproduced as an Addendum to this Brief in Opposition, *infra*, pages A1 to A8. For convenience, the reference "App." hereinafter refers to the Appendices to the Petition and the reference "Add." hereinafter refers to the Addendum to this Brief in Opposition.

compensation benefits to which he was entitled. Pursuant to the mandate of the Act and consonant with its "self-executing" provisions, Strachan Shipping Co. (Employer) and Texas Employers' Insurance Association (Carrier) commenced voluntary payment of compensation and provided medical benefits. Not contesting liability under the Act, Carrier continued the voluntary payment of compensation through October 9, 1956 at which time it notified the Deputy Commission on Form US-208 that compensation had been paid in full and compensation payments were being stopped.

Indicating further concern about his condition, Petitioner wrote to the Deputy Commissioner inquiring as to what he should do. This undated letter of Petitioner's was filed by the Deputy Commissioner on December 10, 1956. Although no formal claim on US-203 was filed, the Deputy Commissioner apparently construed Petitioner's letter as at least an informal claim and noticed a pre-hearing conference for December 14, 1956. Pursuant to this and subsequent pre-hearing conferences on April 19, May 31 and August 9, 1957, the Carrier made voluntary payment of compensation to Petitioner for periods of temporary total and temporary partial disability as recommended and approved by the Deputy Commissioner's Claims Examiner pursuant to the informal adjudicatory practices under the act.

On August 23, 1957, a fifth pre-hearing conference was held. The result of this conference is evidenced by Claims Examiner O'Keefe's Memorandum of Informal Conference on August 28, 1957 (Add. p. A1). This Memorandum reflects that the Petitioner and Carrier agreed to accept the informal adjudication of his com-

pensation claim recommended and approved by the Claims Examiner by which the Petitioner was found to be entitled to an award of compensation for a 12% permanent partial disability to his left leg. The Memorandum noted that all compensation had accrued and could be paid in one sum. The Carrier paid (and the Petitioner accepted) the amount approved by the Claims Examiner on August 29, 1957—nearly 15 years ago—and the Carrier notified the Deputy Commissioner on September 3, 1957, that compensation had been paid in full (Add. p. A2). The Deputy Commissioner issued Form US-212 (Add. p. A3) to Petitioner advising him that he had received the amount of compensation to which he was entitled under the law and that his case would be closed in the files of the Deputy Commissioner's office unless the Petitioner disputed the amount awarded to him. This Form US-212 also specifically advised the Petitioner of the one year limitation provisions of the Act in these categorical terms:

> "The right to compensation for disability is barred unless claim therefore is filed within one year after the injury or within one year after the date of the last payment of compensation and *any application for review of a compensation case must be filed with the Deputy Commissioner within one year after the date of the last payment of compensation or within one year after rejection of a claim.*" (Add. p. A3, Emphasis supplied)

On July 14, 1969—nearly 12 years following the date of the last payment of compensation—Petitioner submitted an additional claim for compensation on the form provided by the Deputy Commissioner's office (BEC Form 203). The Employer and Carrier controverted this

additional claim for compensation because it was not timely filed. (Add. p. A4). The Deputy Commissioner then held a Formal Hearing and issued a Compensation Order in which he made an additional award of compensation.

The Employer and Carrier then instituted proceedings in the Court below pursuant to 33 U.S.C.A. §921(b) seeking, through injunction proceedings, to have the Compensation Order of the Deputy Commissioner set aside as "not in accordance with law." Thereafter, on consideration of the pleadings, the record before the Deputy Commissioner and briefs of counsel, the District Court below filed its Findings of Fact and Conclusions of Law, concluding that the claim of Moses Lewis, Jr., submitted to the Deputy Commissioner on July 14, 1969, was time barred under the limitation provisions of the Act. (App. B, p. 39). Final Judgment was accordingly entered setting aside the Deputy Commissioner's Compensation Order and permanently enjoining its enforcement. Insofar as pertinent to the present Petition the District Court's Final Judgment was affirmed by the Court of Appeals for the Fifth Circuit (App. A, p. 13).

## PETITION ASSERTS NO REASON FOR GRANTING CERTIORARI UNDER RULE 19

The Petition does not directly or affirmatively assert that there is any reason for granting certiorari in this case encompassed within Rule 19 of this Court. By implication only, Respondents gather that Petitioner seeks to bring the Petition within Rule 19 on the ground that the Courts below have "so far departed from the accepted and usual course of judicial proceedings. . . . as to call for an

exercise of this Court's power of supervision" because they did not accept what Petitioner claims to have been a long standing "administrative interpretation" of the Act and possibly on the ground that the decisions below are in conflict with two decisions of the Courts of Appeal for the Second and Third Circuits.

Neither implication is supportable. There has in fact been no such "administrative interpretation", and in any event, both the Act and the regulations promulgated pursuant thereto are directly contrary to the claimed "administrative interpretation".[4] The two decisions cited from the Courts of Appeal for the Second and Third Circuits involved the pertinent section of the Act (Section 22) before its amendment in 1934, and therefore did not involve the question decided by the Courts below in this case.[5]

As none of the basic reasons set forth in Rule 19 of this Court governing the granting of certiorari are present in this case, the Respondent respectfully submits that the Petition should be denied.

## I.

## COURTS BELOW FOLLOWED ACT AND ITS REGULATIONS

Petitioner asserts that the Bureau of Employees' Compensation has for 40 years "interpreted the Act to require only *one* claim for compensation; and that claim remains viable until adjudicated by the Deputy Commissioner under the provisions of Section 19 (33 U.S.C.A. §919)" (Pet., p. 5). Even the local U. S. Attorney, the Depart-

4. See full discussion, *infra*, pages 6 to 13.

5. See full discussion, *infra*, page 13.

ment of Justice and the Solicitor of Labor, all of whom were shown as representing the Deputy Commissioner in the Courts below made no contention before the District Court that there had been any such "administrative interpretation" of the Act. Such a claimed "administrative interpretation" was "discovered" for the first time by the Department of Justice in its brief in the Court of Appeals long after the District Court had rendered its opinion.[6]

There has been no such administrative interpretation of the Act until this case arose, and even if it did exist, the Courts below could not have permitted it to stand as it would not have been in accordance with the Act or the Bureau's own regulations.

As both Courts below held, the Petitioner's basic premise that the "claim" for compensation filed by him on December 10, 1956, was never adjudicated because a Formal Compensation Order was not entered by a Deputy Commissioner is simply not true.[7] They so held because such a position ignores the most basic and fundamental precept of the Act—that compensation shall be paid, when due, promptly and periodically, without requiring the in-

6. None of the pleadings or briefs filed in the District Court by the local U. S. Attorney, the Department of Justice and/or the Solicitor of Labor of the Department of Labor on behalf of the Deputy Commissioner made any such contention. Counsel for Petitioner, however, did so contend in the District Court.

7. Statistics published by the Bureau of Employees Compensation clearly demonstrate that the Act is not so administered. For the fiscal years 1966 thru 1970, an average of only 219 formal Compensation Orders were entered each year, yet during these years an average of 71,285 cases per year were reported as closed. Of the average of 71,285 cases closed, the Bureau's statistics reflect an average of 14,-787 cases per year were closed after compensation had been paid. With only 219 formal Compensation Orders being entered on an average per year, it is obvious that over 98% of the compensated cases are being closed pursuant to informal adjudicatory processes.

tervention of the Deputy Commissioner in uncontested cases except, as was true in this case, to make an award of compensation by approving the permanent partial disability rating agreed upon by the parties.[8] Section 914 of the Act (33 U.S.C.A. §914) so prescribes and expressly recognizes that compensation is payable "without an award" [§914(a), (e) and (h)] and in other circumstances "under the terms of an award" (§914(f)) in contested cases requiring the utilization of the formal adjudicatory processes of the Act.

The Bureau's own regulations expressly provide for the informal adjudication of uncontested cases, and insofar as here pertinent provide:

> "(b) *Claims for compensation . . . are processed by* the deputy commissioner, with or without the assistance of *claims examiners . . . by . . . informal adjudicatory processes, in uncontested cases.* Claims not subject to informal adjustment are processed by the

8. In practice, it is safe to say that in Texas at least, all permanent partial disability ratings such as the one involved here are either specifically approved (where the parties agree) or are specifically made (where the parties do not agree) in writing by the Deputy Commissioner or his representative upon their determination that the rating is fair and reasonable as to all parties. Had the Claims Examiner in this case concluded that the 12% rating agreed upon by the parties was not fair, he not only was obligated by the Act to decline to approve it but most certainly would have done so. He was not bound or obligated to accept the agreement of the parties but had to make his own independent "decision" as to the reasonableness of the award of compensation for permanent partial disability which he was approving. In so doing he performs the same "decision making" function as a United States District Judge who is called upon to approve the reasonableness of a proposed settlement of a minor child's claim for damages for the death of its father. The Judge must make his own independent decision on its reasonableness regardless of what the parties might have agreed upon, and so must a Deputy Commissioner or his Claims Examiner in approving an award of compensation agreed upon by the parties.

deputy commissioner after pre-hearing conference . . . or after formal hearing provided for by the Act, implemented by §§31.9, 31.10, 41.8, 41.9, 51.1 and 51.4 of this chapter.

(c) *Formal proceedings are terminated by the filing of a compensation order* containing findings of fact and award, or other order of the deputy commissioner. . . ." 20 C.F.R. §01.11. (Emphasis supplied)[9]

Precisely such "informal adjudicatory processes" were utilized in this case. This regulation recognizes the "termination" of uncontested cases, informally adjudicated or processed, when it explicitly states that only "formal proceedings" are terminated by the filing of a compensation order.

Additionally Sec. 31.8(a) of the Bureau's Regulations expressly authorizes claims examiners to hold Pre-hearing Conferences as was done in this case[10] and at such conferences to resolve all issues just as was done in this case.[11] If all issues are not resolved by agreement at such a pre-hearing conference, the Claims Examiner is expressly authorized to "make his recommendation to dispose of the matter in controversy" and to advise the parties that "such recommendation is not a 'decision' in the case and will not affect or prejudice the rights of any party, or the further adjustment of the case, should the recom-

9. Section 01.11 of the regulations is reproduced in full in the Addendum, *infra*, page A5.

10. 20 C.F.R. 31.8 is reproduced in full in the Addendum, *infra*, pages A6 to A7. Section 31.8(a) provides in part:

". . . Such conferences (prehearing) may be held by the deputy commissioner, assistant deputy commissioner, *a claims examiner or other person designated for such purpose* by the deputy commissioner or the assistant deputy commissioner." (Emphasis supplied)

11. 20 C.F.R. §31.8(b)(1), *infra*, page A6.

mendation not be accepted by such parties and a later hearing be found necessary."[12]

The obvious termination procedure in this case was the acceptance by all parties of the Claims Examiner's recommended award of compensation (Add. p. A1), payment of the award by the Carrier followed by the Deputy Commissioner's issuance to Claimant of Form US-212, in which he was advised that he had "received the amount of compensation payment to which you are entitled under the law," and that he was free at any time within one year after the last payment of compensation to file an "application for review" of his compensation claim (Add. p. A3). To further proceed by invoking formal proceedings and issue a formal Compensation Order would be maleficent to the spirit and, indeed, the letter of the Act as well as the Bureau's own implementing regulations. It would thwart the self-executing precept of the Act and achieve only the emasculation of the informal adjudicatory process which has been the benchmark of administrative procedure since its genesis.

## THE ACT REQUIRES NO FORMAL COMPENSATION ORDER TO INVOKE LIMITATION PROVISIONS OF SECTION 22

Section 922 of the Act, so far as pertinent here, provides as follows:

> "Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, *the deputy commissioner may, at any time prior to one year after the date of the last payment of compen-*

12. 20 C.F.R. §31.8(d), *infra*, page A7.

> *sation, whether or not a compensation order has been issued,* or at any time prior to one year after the rejection of a claim, *review a compensation case* in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. . . ." 33 U.S.C. § 922 (Emphasis supplied)[13]

The limitation provisions of §922 limited the Petitioner's right to seek a modification of his award of compensation of a 12% permanent partial disability to his left leg to one year following the date of the last payment of compensation. The proceedings had before the Deputy Commissioner in 1970, reflect clearly, the Deputy Commissioner's assessment of this compensation case on the basis of a change of condition within the meaning of §922 of the Act.[14] Section 922 expressly limits the power of the Deputy Commissioner to review "a compensation case" to one year after the date of the last payment of compensation, *"whether or not a compensation order has been issued."* (Emphasis added.)

As both Courts below held, this language is plain and unambiguous and there is no necessity to resort to legislative history to try to divine congressional intent. This provision recognizes the situation which here obtains—the informal adjudication of the claim which resulted in

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13. Section 922 is reproduced in full in the Addendum, *infra*, page A8.

14. The change in condition found by the Deputy Commissioner was from a 12% to a 50% permanent partial disability to his left leg. There was no other change made in the claims examiner's earlier informal adjudication in 1957.

an award of compensation, fully approved by the duly authorized Claims Examiner, which award did not require the entry of a formal compensation order.[15] Regardless of the manner (formal or informal) in which the initial adjudication of the claim (award of compensation) is made, the award of compensation is subject to a limited power of administrative review and modification within a one year period.

The Petition is deceptive in its treatment of the legislative history of the 1934 amendment to the Act when it implies that Petitioner's interpretation was that of this Court in *O'Keefe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 30 L.Ed.2d 424, 92 S.Ct. 405 (1971). *O'Keefe* did not involve the time limitation provisions of the 1934 amendment involved here but only what evidence could be brought forward to show a change in condition or a mistake in a determination of a fact.

Prior to the 1934 amendment Section 22 plainly applied only to those claims which had been adjudicated by the entry of a formal Compensation Order which had become final.[16]

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15. No formal compensation order was required because all issues had been resolved at the informal conference of August 23, 1957 (Add. p. A1), precisely as contemplated by Section 31.8 of the Bureau's regulations (20 C.F.R. §31.8, Add. p. A6 to A7).

16. For ease of comparison and to clearly show the changes made by the amendment to Section 22, we reproduce it here with the additions made in 1934 in italics and the deletions made in [ ] so far as pertinent here:

> Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions *or because of a mistake in a determination of fact by the deputy commissioner,* the deputy commissioner may, at any time [during the term of an award and after the compensation order in respect of such award has become final] *prior to one year after the date of the last payment of compensation, whether or not a compen-*

The most obvious purpose of the 1934 amendment was to permit review and modification of all awards of compensation—as Congress plainly expressed it—"whether or not a compensation order has been issued." Petitioner actually contends that these words in the 1934 amendment made no change in §922 at all—that even now only formal compensation orders are subject to §922 review. The absurdity of this contention is obvious, not only because of the words added by the 1934 amendment, but because of the deletion of the requirement in the original 1927 act that only a compensation order which had become final was subject to review under §922.

Thus, the Courts below have not departed to any extent from the accepted and usual course of judicial proceedings, but have in fact correctly followed the clear and plain Congressional mandate in the Act and the regulations promulgated pursuant to it.

## II.

## NO CONFLICT EXISTS BETWEEN COURTS OF APPEAL

The Petitioner's attempt to imply that the decisions of the Court of Appeals for the Third Circuit in *Lowe* and for the Second Circuit in *Locke* are in conflict with the decisions of the Courts below is even further off base.[17]

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*sation order has been issued,* review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation paid under authority of the prior order.

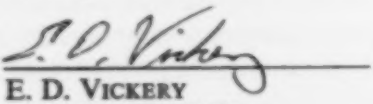
17. Pet. p. 7-9, citing *American Mut. Liability Ins. of Boston v. Lowe,* 85 F.2d 625 (3rd Cir., 1935) and *Lumber Mut. Cas. Ins. Co. v. Locke,* 60 F.2d 35 (2nd Cir., 1932).

Both were cases involving Section 22 before the 1934 amendment when Section 22 clearly applied only to cases in which a formal compensation order had been entered. Since the 1934 amendment Section 22 clearly applies whether or not a compensation order has been entered, and thus neither *Lowe* nor *Locke* support the Petitioner to any extent and are not in conflict with the decisions of the Court below in this case.[18]

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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*Of Counsel:*

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---

18. In fact as the District Court below noted in its opinion, the Court of Appeals in *Lowe* "discussed the effect of the 1934 amendment" and intimated a different result would be required under that amendment.

The unpublished District Court case cited by Petitioner, *Peerless Ins. Co. v. Hill*, 5-69 Civ. 22, D. Minn. (1969), (Pet., p. 9) is of no help to him either, simply because no adjudication of his claim of any kind, formal or informal, had previously been made and thus Section 22 was not involved.

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing Brief in Opposition have been served on the attorneys for the Petitioner, Moses Lewis, Jr., Arthur J. Mandell, Esq. and Sidney Ravkind, Esq., Messrs. Mandell & Wright, 1901 First National Life Building, Main at Rusk, Houston, Texas 77002, and on the attorneys for the other Appellant below, Lee H. Hollis, Deputy Commissioner, the Honorable Anthony J. P. Farris, United States Attorney, United States Courthouse, Houston, Texas 77061, and L. Patrick Gray III, Esq., Assistant Attorney General and Leavenworth Colby, Esq., Special Assistant to the Attorney General, U. S. Department of Justice, Washington, D.C. 20530, and pursuant to Rule 33-2.(a) of this Court on the Honorable Erwin N. Griswold, Solicitor General of the United States, Department of Justice, Washington, D.C. 20530 by depositing the same in the United States Post Office with first class postage prepaid, air mail postage prepaid where required, to the addresses shown above on this the 7th day of July, 1972.

E. O. Vickery

Of Royston, Rayzor, Cook & Vickery

A1

# ADDENDUM

U. S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
EIGHTH COMPENSATION DISTRICT
ROOM 302, POST OFFICE BUILDING
GALVESTON, TEXAS

ADDRESS REPLIES TO:
THE DEPUTY COMMISSIONER

REFER TO FILE NO. _____

August 28, 1957

MEMORANDUM OF INFORMAL CONFERENCE

Re: 100-1523
Moses Lewis
Inj. 7-11-56
Strachan Shipping Co

Conference: Houston, Texas, August 23, 1957

Appearances: Claimant, Mr. Mac Gann and Mr. Reuben Schwartz, for the carrier

Issue: Status

After a general discussion, the claimant and carrier agreed that the claimant is suffering a 12½ permanent partial loss of use of the left leg because of the injury he suffered on July 11, 1956.

The claimant withdraws his claim for transportation.

Result: It is recommended that the carrier pay the claimant 29.76 weeks at $35.00 per week in a total amount of $1,041.60 for permanent partial disability.

Compensation may begin on January 23, 1957. All compensation has accrued and may be paid in one sum.

WILLIAM O'KEEFFE
Examiner

WOK:cl

cc Claimant
Carrier

DEFENDANT'S EXHIBIT
_____

# A2

9-514 7131—U. S. 304

United States Employees Compensation Commission

Office of Deputy Commissioner Galveston

Administering Longshoremen's and Harbor Workers' Compensation Act

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Case No.

Insurance Carrier's No.

**NOTICE TO THE DEPUTY COMMISSIONER THAT THE PAYMENT OF COMPENSATION HAS BEEN STOPPED OR SUSPENDED**

(To be filed with Deputy Commissioner, in duplicate, immediately upon stoppage or suspension of compensation)

1. Name of employer Streetman Shipping Company
2. Office address: Street and No. Cotton Exchange Bldg. City or town Houston
3. Name of injured person E. Louis
4. Present address: Street and No. 2400 Dumlich City or town Houston
5. Date of accident or first illness 7-11-56, 19 Date disability began 7-15-56, 19
6. Date compensation began 7-15-56, 19 Date disability ended 10-9-56, 19
7. Date compensation ended 10-9-56, 19 Days worked during disability period none
8. riod of actual disability 12 weeks 3 days.
9. Average daily wage $____ multiplied by ____ = $____ divided by 52 = average weekly wage $____ multiplied by 66⅔ = compensation rate, $ 35.00 (Maximum compensation $45.00 per week)
10. If temporary partial disability, give computation of compensation paid
12 weeks 13 weeks at $35.00 per week (10-10-56 thru 2-12-57)

**BASIS OF COMPENSATION PAYMENTS, EXCLUDING MEDICAL**

| NONFATAL | | Amount | | FATAL | Amount |
|---|---|---|---|---|---|
| | | | | Paid to dependents | |
| Temporary total | 12 wks. 3 days | 435 | 00 | Name | |
| " partial | 18 " " | 630 | 00 | " | |
| Permanent total | " " " | | | " | |
| " partial | 25.76 " " | 1041 | 60 | " | |
| Disfigurement | | | | " | |
| | | | | " | |
| | | | | Funeral expense | |
| | | | | No dependents—paid to the Treasurer of the United States | |
| Total | | 2106 | 60 | Total | |

11. Description of permanent injury or facial or head disfigurement 12" RED to left leg.

12. Has compensation been paid in full? YES If not, give reasons why payments have been stopped or suspended

Name of Insurance Carrier Texas Employers' Insurance Association

Signed by Jeff Dell

Dated 9-3-57, 19 Official title Office Adjuster

DEFENDANT'S EXHIBIT

A3

Case No. 100-[illegible]
Insurance Carrier's No.

U. S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT
OFFICE OF THE DEPUTY COMMISSIONER
FOR THE 5 COMPENSATION DISTRICT

602 U. S. Post Office Building
Galveston, Texas

Mr. Moses Lewis
3409 Moulin Ave.
Houston, Texas

Sept. 16, 1957, 19

NOTICE TO INJURED EMPLOYEE OF TERMINATION OF COMPENSATION PAYMENTS

DEAR SIR:

Various reports which have been filed here by the employer, the insurance carrier, and attending physicians show the following relative to your case:

X Injured 7-11-56, 19, and disability began 7-15-56, 19

__ You were able to return to work within seven days and no compensation is due.

X You were paid for temporary total disability from 7-15-56 to 10-9-56 at $35.00 a week.

X You were paid for temporary partial disability from 10-10-56 to 2-12-57 at $35.00 a week.

X You were paid for permanent partial disability from 1-23-57 to 8-19-57 at $35.00 a week.

X You were paid for 12 percent loss of left leg for 25.76 weeks at $35.00 a week.

X You returned to work on 10-10-56 2-13-57, 19, at full earning power.

__ The attending physician reports you able to return to work on _____, 19

X You have no serious head or facial disfigurement, and no permanent disability from the injury for which you have not been paid compensation as shown above.

If the facts in your case are as indicated above, you have received the amount of compensation payment to which you are entitled under the law, and the case will be closed in the files of this office.

If the facts are not as indicated above, kindly advise this office by personal call or letter WITHIN TEN DAYS as to the actual facts, and your case will have further investigation.

The right to compensation for disability is barred unless claim therefor is filed within one year after the injury or within one year after the date of the last payment of compensation, and any application for review of a compensation case must be filed with the Deputy Commissioner within one year after the date of the last payment of compensation or within one year after rejection of a claim.

cl

Very truly yours,

C. C. Caldwell

DEFENDANT'S EXHIBIT 3

Form 203-Rev
7-1-50

U. S. DEPARTMENT OF LABOR—BUREAU OF EMPLOYEES' COMPENSATION

Office of Deputy Commissioner Galveston

Administering Longshoremen's and Harbor Workers' Compensation Act

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Case No. 100-1523

Insurance Carrier's No. 25-56-76837

## ANSWER OF EMPLOYER OR INSURANCE CARRIER TO EMPLOYEE'S CLAIM FOR COMPENSATION

Moses Lewis, Jr., Claimant

vs.

Strachan Shipping Co., Employer

Texas Empl. Ins. Assoc., Insurance Carrier

The employer or insurance carrier above named for answer to the claim respectfully shows:

1. It is [Contested / admitted] that applicant sustained an injury on or about the date set forth in the application.

2. It is [admitted / Contested] that both the employer and employee were subject to the Longshoremen's and Harbor Workers' Compensation Act at the time of the alleged injury.

3. It is [admitted / Contested] that the relationship of employer and employee existed at the time of the injury.

4. It is [admitted / Contested] that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.

5. It is [admitted / Contested] that notice of injury was given employer as specified in application.

6. It is [admitted / denied] that applicant was permanently disabled to the extent stated in application.

7. It is [admitted / denied] that applicant was temporarily disabled for the period stated in application.

8. It is [admitted / denied] that the rate of wages as set forth in application is correct.

9. The Association contends that a Formal Claim was not filed within the one year statutory period.

Signed Barbara Bradley

Note.—The employer or insurance carrier should answer the claim within ten days from the date that a copy of it is served upon him. The original answer should be mailed to the deputy commissioner at the above address and a copy thereof served upon the claimant either personally or by mailing to the address in the claim.

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20 C.F.R. #01.11

§ 01.11 Processing of claims.

(a) The deputy commissioners adjudicate claims under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 919), in compensation districts established pursuant to such act. The deputy commissioner performs the quasi-judicial function of deciding the rights of private parties—the employee, or his dependents (as the claimant or claimants), and the employer, or employer and his insurance carrier (as respondent or respondents).

(b) Claims for compensation or for reimbursement of medical expenses (where the employer has failed or neglected to furnish medical care) are processed by the deputy commissioner, with or without the assistance of claims examiners in his office, by the verification of payments, and informal adjudicatory processes, in uncontested cases. Claims not subject to informal adjustment are processed by the deputy commissioner after pre-hearing conference (to afford amicable disposition of controversies, to narrow issues, and to simplify subsequent methods of proof), or after formal hearing provided for by the act, implemented by §§ 31.9, 31.10, 41.8, 41.9, 51.1 and 51.4 of this chapter.

(c) Formal proceedings are terminated by the filing of a compensation order containing findings of fact and award, or other order of the deputy commissioner §§ 31.12, 31.13, 31.14, 41.11, 41.12, 41.13, and 51.1 of this chapter. (Sec. 19, 44 Stat. 1435, as amended; 33 U.S.C. 919)

20 C.F.R. §31.8

§31.8 Prehearing conferences.

(a) In order to expedite and simplify formal administrative proceedings, in all cases in which there are issues of fact or law, and, whenever practicable, no formal hearings will be set until after prehearing conferences. Such conferences may be held by the deputy commissioner, assistant deputy commissioner, a claims examiner or other person designated for such purpose by the deputy commissioner or the assistant deputy commissioner.

(b) The purposes of such prehearing conferences are (1) amicably to dispose of controversies wherever possible; (2) to narrow issues; and (3) to simplify the subsequent methods of proof.

(c) Prehearing conferences may be set upon 10 days' notice to the parties in interest (or a longer period if the circumstances require, or shorter period if agreed upon by the parties). They shall be kept characteristically informal, and shall not be stenographically reported. It shall be the duty of the deputy commissioner, assistant deputy commissioner, claim examiner or other person in charge of the conference to guide the discussion toward the achievement of the purposes of such conference, giving the parties the benefit of his specialized knowledge and experience.

(d) At the termination of such conferences the person in charge thereof shall prepare stipulations, for the signatures of the parties, covering agreements as to all or part of the facts, admissions, narrowing of issues, or simplification of methods of proof. Such stipulations when signed

by the parties in interest shall be made and become part of the formal record of the case. Where stipulations relate to evidence to be used at a later formal hearing, such evidence may then be received as such evidence and appropriately identified by marking such evidence, respectively, as claimant's or respondent's exhibits, consecutively numbered in each respect. At the termination of such a conference, the person in charge thereof shall prepare for the file in the case a memorandum setting forth the purpose for which the conference was held, the matters discussed and the results achieved. Should a conference terminate without complete achievement of the purpose thereof. and the remaining issue or issues be of such character as not to present a difficult basis for adjustment by amicable agreement of the interested parties, the person in charge, after review of the record of the case, may by letter addressed to the parties in interest make his recommendation to dispose of the matter in controversy, setting a date for reply thereto. Every such letter should advise the interested parties that the purpose thereof is to recommend a basis for agreement, upon such issue or issues, as appears from review of the information contained in the current record of the case and that such recommendation is not a "decision" in the case and will not affect or prejudice the rights of any party, or the further adjustment of the case, should the recommendation not be accepted by such parties and a later hearing be found necessary.

(Sec. 23(b), 44 Stat. 1437; 33 U.S.C. 923(b)) [13 F.R. 7670, Dec. 10, 1948]

33 U.S.C.A. §922

§922. Modification of awards

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary.

Mar. 4, 1927, c. 509, § 22, 44 Stat. 1437; May 26, 1934, c. 354, § 5, 48 Stat. 807; June 25, 1938, c. 685, § 10, 52 Stat. 1167.